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NOT TO BE PUBLISHED

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
THIRD APPELLATE DISTRICT
(Lassen)

FAITH WOODALL, Plaintiff and Appellant, v. CHRISTOPHER ENGLISH et al., Defendants and Respondents.	C085177 (Super. Ct. No. 50065)

Code of Civil Procedure[1] section 1032, subdivision (a)(4), allows a prevailing defendant "in whose favor a dismissal was entered" to recover his or her costs as a matter of right. If that dismissal, however, was the result of plaintiff accepting a defendant's offer pursuant to section 998, then the defendant cannot be said to have prevailed and will not recover his or her costs unless otherwise specified in the settlement. (*DeSaulles v. Community Hospital of Monterey Peninsula* (2016) 62 Cal.4th 1140, 1158.) This case presents itself as one involving the awarding of costs, but, in actuality, the case turns on whether the parties reached a valid settlement following acceptance of a section 998

[1] Further section references are to the Code of Civil Procedure unless indicated.

offer. If respondents Christopher English, Ember English, and Navigators Insurance Company on behalf of Langley Design and Remodel, Inc. (collectively respondents) entered into a valid settlement with plaintiff Faith Woodall, then they are not entitled to costs because they did not prevail as provided in section 1032 and the agreement explicitly provided the parties would bear their own costs. If there was no settlement, then the opposite is true. Unfortunately, we cannot determine this issue because it was never decided by the trial court. Accordingly, we reverse the court's order awarding costs to respondents and remand the matter for the trial court to determine the validity of the section 998 settlement.

FACTUAL AND PROCEDURAL BACKGROUND

Plaintiff sued the County of Lassen and its Department of Community Development (collectively the County) as well as respondents.[2] She alleged respondents failed to rehabilitate her uninhabitable home with a $100,000 loan she obtained from the County through the United States Department of Housing and Urban Development. She further alleged the County, as her representative, failed to ensure respondents constructed an inhabitable home for her to live in. The County cross-complained against respondents.

On March 3, 2017, plaintiff accepted respondents' section 998 offer to "compromise in the amount of Fifty Thousand and One Dollar ($50,001.00) on the terms stated above." The terms provided respondent would "compromise and settle the above-entitled matter with Plaintiff . . . , including all causes of action brought by [her] against [respondents] for Fifty Thousand and One Dollar ($50,001.00) conditioned upon Plaintifff's execution of a dismissal of the above-entitled action, with prejudice, and a general release to be drafted by counsel for [respondents], with each party to bear their

[2] Plaintiff also sued Roberts Truck and Tractor. We do not discuss this party or related proceedings because it is not relevant to the appeal.

own fees and costs. The release executed by Plaintiff shall include a waiver, by Plaintiff, of her rights pursuant to California Civil Code [section] 1542."

Also on March 3, 2017, plaintiff accepted the County's settlement offer. In it, the County agreed to cancel the loan, repayment, and maintenance agreements between itself and plaintiff as well as the related deed of trust. The County also agreed to pay plaintiff $60,000 and assign to her all its claims against the other named defendants in the matter, including respondents.

On March 6, 2017, the day set for trial, Judge Bobby McNatt inquired about the status of the case considering the multiple settlements. Plaintiff indicated her direct claims against respondents had been resolved but she and respondents were in the "process" of settling the County's claims against respondents, which plaintiff had just been assigned. Respondents' counsel disagreed and indicated she had negotiated respondents' offer with the understanding the County would dismiss its cross-complaint against respondents and pay plaintiff $50,000.[3] Although respondents' counsel did not know when plaintiff came to an agreement with the County, they assumed acceptance of her offer by plaintiff resolved the whole case. Respondents' counsel added, "[t]here's no way we would agree to [the section 998 settlement] and then litigate the cross-complaint." Plaintiff countered that she negotiated and resolved her own rights with respondents and not the County's rights, which she had just been assigned. Judge McNatt found there was no meeting of the minds between plaintiff and respondents regarding the section 998 offer because respondents intended to resolve all issues between the parties with the compromise while plaintiff did not. Respondents withdrew their section 998 offer.

The next day, there was another hearing on the issue. Plaintiff argued that because she had accepted respondents' section 998 offer, the court was required to dismiss with

[3] The County paid plaintiff $60,000.

prejudice plaintiff's case against respondents pursuant to the agreement. Judge McNatt disagreed stating "[w]ithout clearly articulating that the cross-claims were extinguished, the clear intent to me that runs through those [section] 998 offers is -- as drafted by defense counsel that they were to be global resolutions of all claims involved in this matter." Quoting *Peterson v. John Crane, Inc.* (2007) 154 Cal.App.4th 498, 510, Judge McNatt noted " 'the interpretation [plaintiff] urges might well frustrate the settlement purpose of Section 998. A defendant may be willing to settle for a certain sum if the settlement would actually end the case for that defendant, but may not be willing to settle just a part of the case for that sum while remaining in the litigation on additional claims.' That, to me, is squarely on point with the situation we find ourselves in here. [¶] To me, the plaintiff cannot have her cake and eat it too. The only reasonable inference to me in the language I see in those [section] 998 offers is that these were intended to be global resolutions, that this was intended to be the end of the case especially where the entire case involves the same set of operative facts."

Judge McNatt indicated the matter would go to trial because there was no settlement. Plaintiff disagreed and insisted the offer she had was valid and enforceable. The court, plaintiff, and respondents then agreed the proper procedure going forward was for the court to dismiss plaintiff's action without prejudice and then for plaintiff to move to enforce the settlement agreement, at which time another judge would rule on whether the section 998 settlement was valid. The court then dismissed plaintiff's complaint without prejudice. Plaintiff also moved and the court granted her motion to dismiss the cross-complaint.

Before plaintiff moved to enforce the settlement, respondents filed a memorandum of costs under section 1032. Plaintiff moved to tax costs arguing respondents were not the prevailing party. Judge Tony Mallery heard and ruled on plaintiff's motion. His order reads: "The Court has determined that the trial judge, Judge McNatt, determined that Plaintiff's purported acceptance of [respondents' section] 998 Offer was invalid and

therefore there was no settlement. Therefore, the trial court dismissed the entire action without prejudice on March 7, 2017. [¶] As a result of this dismissal, [respondents] filed their Memorandum of Costs." The court then awarded respondents $20,455.58.[4] Plaintiff appeals this order.

DISCUSSION

Plaintiff contends Judge Mallery erred when finding respondents the prevailing party because he incorrectly believed Judge McNatt had already made that determination by finding the section 998 settlement invalid. Respondents counter that any error in this regard was harmless because Judge Mallery's order is correct in ruling they are entitled to their costs pursuant to section 1032. They urge us to review the legal correctness of Judge Mallery's decision and not its reasoning. (See *D'Amico v. Board of Medical Examiners* (1974) 11 Cal.3d 1, 19 [" 'No rule of decision is better or more firmly established by authority, nor one resting upon a sounder basis of reason and propriety, than that a ruling or decision, itself correct in law, will not be disturbed on appeal merely because given for a wrong reason' "].) We decline to do so.

Respondents' argument that Judge Mallery's cost award was correct even though his reasoning -- that Judge McNatt had already determined the prevailing party -- was wrong, suffers from a major problem. The problem is that either judge needed to determine the prevailing party and that determination was never made. Judge Mallery's decision to award costs was wholly informed by his assumption that Judge McNatt already determined the issue. Indeed, as the order awarding costs shows, respondents were entitled to their costs "[a]s a result" of the dismissal and finding that there was no settlement. Further, there was no pending motion before Judge McNatt to rule on. This explains why he directed plaintiff to move for enforcement of the settlement by a judge

[4] There is no reporter's transcript of this hearing in the appellate record.

who could better look into the issue. Thus, no prevailing party determination has ever been made, whether for the right or wrong reasons.

Moreover, we may only uphold a decision when made for the wrong reasons if that decision is correct as a matter of law. (*D'Amico v. Board of Medical Examiners*, *supra*, 11 Cal.3d at p. 19.) Here, we are not so sure and thus decline to exercise our discretion to reach the issue. Section 998 settlements need not resolve an entire case. As is typical, the issue is much more complicated than that. (See *Westamerica Bank v. MBG Industries, Inc.* (2007) 158 Cal.App.4th 109, 114 [finding a valid section 998 settlement when it resolved the complaint between the parties and not the cross-complaint between the same parties].) Further, respondents' counsel's statements failed to provide evidence there was no meeting of the minds. (See *Alex Robertson Co. v. Imperial Casualty & Indemnity Co.* (1992) 8 Cal.App.4th 338, 346 [even if argument by counsel were evidence, it is inadmissible to contradict the express terms of a contract].) However, Judge McNatt did believe the settlement was ambiguous by its terms and affirmatively showed no meeting of the minds. Given the inclusion of a general release provision, there may be some ambiguity to the rights plaintiff retained after accepting respondents' section 998 offer. (Civ. Code, § 1542 ["A general release does not extend to claims that the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release and that, if known by him or her, would have materially affected his or her settlement with the debtor or released party"].) Whether this ambiguity goes to the validity of the settlement or its interpretation is best left to the trial court, which may decide the issue after a hearing and opportunity for the parties to develop the record accordingly. (See *Coral Construction, Inc. v. City and County of San Francisco* (2010) 50 Cal.4th 315, 336 [acknowledging its ability to review a summary judgment ruling, but ordering remand because of the benefit a trier of fact provides].)

DISPOSITION

The order awarding costs to respondents is reversed. The case is remanded so the trial court can determine the prevailing party by first determining the validity and enforceability of the section 998 settlement. Costs on appeal are awarded to plaintiff. (Cal. Rules of Court, rule 8.278(a)(1).)

/s/
Robie, J.

We concur:

/s/
Blease, Acting P. J.

/s/
Mauro, J.